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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

JUL 25 2001

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKETED BY

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IN THE MATTER OF PDM ENERGY, L.L.C. FOR
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RETAIL ELECTRIC SERVICES AS AN
ELECTRIC SERVICE PROVIDER PURSUANT TO
A.A.C. R14-02-1601.

DOCKET NO. E-03869A-00-0268

DECISION NO. 63869

OPINION AND ORDER

DATE OF HEARING: March 12, 2001
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Lyn Farmer
APPEARANCES: Mr. Michael W. Patten, ROSHKA, HEYMAN & DeWULF, PLC, on behalf of PDM Energy, L.L.C.;
Mr. Todd Wiley, GALLAGHER & KENNEDY, on behalf of Arizona Electric Power Cooperative, Graham County Electric Cooperative, Duncan Valley Electric Cooperative, Trico Electric Cooperative, and Sulphur Springs Electric Cooperative; and
Ms. Janet Wagner, Staff Attorney, Legal Division on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On April 21, 2000, PDM Energy, L.L.C. ("PDM" or "Company") filed an application for a Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide competitive retail electric services as an Electric Service Provider ("ESP") in the State of Arizona.

On July 25, 2000, the Utilities Division Staff ("Staff") notified the Company that its application was not sufficient. On August 24, September 14, and November 16, 2000, the Company filed supplemental and additional information.

On January 4, 2001, Staff filed its Staff Report, recommending approval after a hearing.

By Procedural Order issued January 11, 2001, the matter was set for hearing on March 12, 2001.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On April 21, 2000, PDM filed its application requesting certification as an ESP with authority to provide competitive retail electric service in all areas of the State of Arizona which the Commission has designated as open to retail electric competition, excluding the certificated areas of Morenci Water & Electric Company ("Morenci") and Ajo Improvement Company ("Ajo"), which are subsidiaries of PDM's ultimate parent company, Phelps Dodge Company ("Phelps Dodge").

2. PDM is an Arizona limited liability company, authorized to do business in Arizona since 2000.

3. On January 3, 2001, Staff filed its Staff Report in this matter, recommending that PDM be granted a CC&N as an ESP with authority to provide competitive retail services statewide.

4. By Procedural Order dated January 11, 2001, the Affected Utilities were joined as parties in this matter with the opportunity to respond to the Application, and were given notice that if the Application is granted, the CC&Ns of the Affected Utilities will be rescinded, altered, or amended pursuant to A.R.S. § 40-252.

5. PDM caused notice of the hearing in this matter to be published in the Arizona Republic on January 22, 2001.

6. On March 12, 2001, a public hearing was held as scheduled, with David Ogonowski testifying on behalf of PDM, and Erinn Adreasen testifying on behalf of Staff. Arizona Electric Power Cooperative, Graham County Electric Cooperative, Duncan Valley Electric Cooperative, Trico Electric Cooperative, and Sulphur Springs Valley Electric Cooperative presented no evidence, but did cross-examine witnesses.¹

7. PDM is wholly-owned by its sole member, Morenci. Morenci is wholly-owned by Phelps Dodge Corporation. Phelps Dodge also owns Ajo, an Arizona certificated public service

¹ Administrative notice is taken of the PG&E CC&N application in Docket No. E-03595A-98-0389.

1 company.

2 8. PDM seeks authority to provide competitive retail electric supply services to
3 commercial and industrial customers, billing and collection services, and meter service and meter
4 reading service through a resale arrangement with a certificated provider. PDM also intends to offer
5 its retail customers other non-certificated services, such as financing options.

6 9. PDM plans to purchase power on the open market and intends to supply customers
7 through long and short term energy contracts and wholesale power purchases.

8 10. PDM proposed a maximum rate of \$25 per kWh. PDM's witness testified that this
9 maximum price does not reflect an hourly energy price that customers would normally incur, nor
10 does it reflect an expected monthly average price per kWh. Typically, the hourly energy prices
11 would be substantially below this price, but the tariff's maximum price was intentionally set at a
12 high level to accommodate the potential high variation in hourly market energy prices based on
13 recent historical experience.

14 11. PDM's witness testified that PDM will be able to draw upon the extensive expertise of
15 Phelps Dodge in the acquisition of energy for large industrial customers. PDM will contract with
16 Phelps Dodge to use its personnel that have significant experience in wholesale power acquisition,
17 scheduling, and delivery, and PDM also plans to obtain additional technical expertise through new
18 employees and consultants.

19 12. PDM's parent, Phelps Dodge, submitted a statement of intent to provide financial
20 support to PDM. Phelps Dodge's 1999 Annual Report lists assets of \$8.23 billion, total equity of
21 \$3.28 billion, retained earnings of \$180.3 million and a net loss of (\$257.8) million on revenues of
22 \$3.11 billion. Phelps Dodge had net income of \$109.9 million and \$408.7 million for 1998 and
23 1997, respectively. Based upon this information, Staff believes the Company has sufficient financial
24 resources available to meet its capitalization requirement or incur operating losses.

25 13. On July 10, 2001, PDM submitted documentation that it had acquired a \$100,000
26 performance bond.

27 14. Staff's Report recommended approval of the Application subject to the following
28 conditions:

- 1 (a) PDM must either be its own scheduling coordinator, or have a service acquisition
2 agreement with a Scheduling Coordinator before it provides service. The service
3 acquisition agreement must be approved by the Director, Utilities Division, prior
4 to the provision of service in a service area;
- 5 (b) PDM must have a service acquisition agreement with the Utility Distribution
6 Company in each service area to be served that is approved by the Director,
7 Utilities Division, prior to the provision of service in a service area;
- 8 (c) PDM will provide the Director, Utilities Division, with evidence indicating that the
9 UDC has found it credit worthy prior to provision of any certificated service;
- 10 (d) PDM's tariffs filed in this matter shall be approved on an interim basis;
- 11 (e) PDM shall not provide competitive services until the Commission approves a
12 Code of Conduct for Morenci Water & Electric Company. Staff recommends that
13 the Commission address any issues raised by the sharing of employees between
14 PDM and any other Phelps Dodge entity in the code of conduct proceeding;
- 15 (f) PDM shall apply to the Commission for approval prior to the provision of any
16 other competitive service not approved at this time;
- 17 (g) PDM shall acquire all necessary licenses prior to actually providing service;
- 18 (h) PDM shall not be authorized to provide competitive service in the certificated area
19 of an Affected Utility until the Commission has reached a final resolution in that
20 Affected Utility's respective stranded cost filing;
- 21 (i) PDM shall, prior to providing any specialized billing and collection service in
22 service areas regulated by the Commission, file a tariff setting forth a maximum
23 price for specialized billing and collection services;
- 24 (j) PDM shall not provide services in the service areas of Morenci Water & Electric
25 Company and Ajo Improvement Company;
- 26 (k) PDM shall acquire from Phelps Dodge a clarification of the extent to which it
27 intends to provide financial support to PDM²;
- 28 (l) Applicant should be required to file in this Docket, within 18 months of the date it

² Staff had initially requested additional information on the extent of Phelps Dodge's intent to provide financial support to PDM, but subsequently agreed to PDM obtaining a performance bond. PDM has satisfied this recommendation with its July 10, 2001 filing.

first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:

- (1) A dollar amount representing the total revenue for the first twelve months of electric service provided to Arizona customers by the Applicant following certification, adjusted to reflect the Maximum rates that the Applicant has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.
- (2) The total actual operating expenses for the first twelve months of electric service provided to Arizona customers by the Applicant following certification.
- (3) The value of all assets, listed by major category, used for the first twelve months of electric service provided to Arizona customers by the Applicant following certification. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
- (4) Staff further recommended that the Applicant's failure to meet the condition to timely file sufficient information for a fair value finding and analysis and recommendation of permanent tariffs shall result in the expiration of the Certificate and of the tariffs.

15. PDM's witness testified at the hearing that it had no objections to Staff's recommendations as stated in Findings of Fact No. 14.

16. Staff's recommendations in Findings of Fact No. 14 above are reasonable and necessary.

17. PDM has the requisite technical and financial capability to provide competitive retail electric services within the State of Arizona

CONCLUSIONS OF LAW

1. PDM is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over PDM and the subject matter of the application.

3. Notice of the application was provided in accordance with law.

4. The Arizona Legislature and the Commission have found that competition is in the public interest.

5. PDM is a fit and proper entity to receive a Certificate to provide competitive retail electric services.

6. Staff's recommendations contained in Findings of Fact No. 14 are reasonable and should be adopted.

7. The rates and terms and conditions of services adopted herein are fair, reasonable, and consistent with the law and Commission Rules.

8. The Affected Utilities received notice of the possibility of rescission, alteration, or amendment of their existing Certificates should PDM receive a Certificate to provide competitive services within the territories of the Affected Utilities.

9. There was no evidence presented in this proceeding indicating that any of the Affected Utilities had failed to render adequate service or had charged unreasonable rates.

10. Granting PDM's application for a Certificate to supply competitive retail electric services within the service territories of the Affected Utilities is in the public interest because it will provide a reasonable opportunity for the potential benefits of competition to develop in the State of Arizona.

11. It is not in the public interest to rescind, alter, or amend the Certificate of any Affected Utility prior to final resolution of the Stranded Cost issues for that Affected Utility.

12. It is in the public interest to approve the maximum rates requested in the application of PDM on an interim basis.

ORDER

IT IS THEREFORE ORDERED that the application of PDM Energy, L.L.C. for a Certificate of Convenience and Necessity to provide competitive retail electric services as an electric service provider is hereby granted, as conditioned herein.

IT IS FURTHER ORDERED that PDM Energy, L.L.C. shall comply with all of the Staff recommendations contained in Findings of Fact No. 14.

IT IS FURTHER ORDERED that PDM Energy, L.L.C. shall file the FVRB information set forth in Findings of Fact No. 14 within 18 months of the date that it first provides service.

IT IS FURTHER ORDERED that the maximum rates requested in the application of PDM

1 L.L.C are hereby approved on an interim basis.

2 IT IS FURTHER ORDERED that PDM Energy, L.L.C. shall not be authorized to provide
3 competitive services in any certificated area of any Affected Utility until the Certificate of
4 Convenience and Necessity of the respective Affected Utility has been amended.

5 IT IS FURTHER ORDERED that PDM Energy, L.L.C.'s Certificate of Convenience and
6 Necessity shall be considered null and void without further order from the Commission should PDM
7 Energy, L.L.C. fail to comply with the above conditions.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

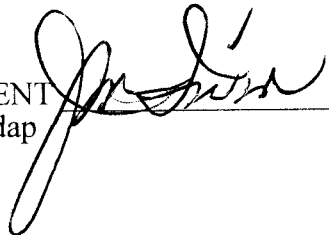
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12 CHAIRMAN

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12 COMMISSIONER

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12 COMMISSIONER

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14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this 5th day of July, 2001.

18 
19 BRIAN C. McNEIL
20 EXECUTIVE SECRETARY

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21 DISSENT
22 LAF:dap
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1 SERVICE LIST FOR: PDM ENERGY, L.L.C.
2 DOCKET NO.: E-03869A-00-0268

3
4 Copies mailed to Electric Competition Service List -
Docket No. RE-00000C-94-0165

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